

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.493 OF 2017

DISTRICT : MUMBAI

Shri Dilip Balkrishna Desai.)
Age : 57 Yrs., Working as Junior)
Accountant in the Office of belownamed)
Respondent No.1, R/o. 501, Sita CHS Ltd.,)
G.D. Ambekar Marg, Parel, Mumbai – 12.)...**Applicant**

Versus

1. The Financial Advisor & Deputy)
Deputy Secretary, Food, Civil Supply)
and Consumer Protection Dept.,)
M.S, Having Office at G.T. Hospital)
Campus Building, 8th Floor, L.T.)
Marg, Mumbai – 400 001.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Food, Civil Supply & Consumer)
Protection Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.12.2019

JUDGMENT

1. In the present O.A, the Applicant has challenged the order dated 13.05.2015 whereby his suspension period was treated as suspension period for all purposes and further challenged the order passed by Appellate Authority dated 9th September, 2016 whereby the punishment of withholding of next one increment with cumulative effect was imposed.

2. Shortly stated facts are as follows :-

At the relevant time, the Applicant was working as Senior Clerk under the control of Respondent No.1 as a disciplinary authority. The Applicant was served with charge-sheet dated 14.06.2014 for imposing major punishment under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). Accordingly, the Enquiry Officer was appointed and enquiry was concluded. The Enquiry Officer submitted his report holding the Applicant guilty for the charges levelled against him. On receipt of Enquiry Report, a Show Cause Notice was issued to the Applicant. Accordingly, the Applicant submitted his reply on 03.02.2015 (Page Nos.63 to 79 of Paper Book). However, the Disciplinary Authority i.e. Respondent No.1 by order dated 13.05.2015 imposed punishment of withholding of next two increments with cumulative effect. On the same day, the Respondent No.1 passed another order treating the suspension period of the Applicant as 'suspension period for all purposes'. Being aggrieved by the punishment imposed by Disciplinary Authority, the Applicant has filed appeal before the Respondent No.2. The Appellate Authority after giving hearing to the Applicant, by order dated 9th September, 2016, confirmed the finding of Disciplinary Authority holding the Applicant guilty for the charges, but modified the punishment of imposing stoppage of next one increment due on 1st July, 2015 with

cumulative effect. Being aggrieved by these orders, the Applicant has filed the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed both the impugned orders, namely the order of treating suspension period as 'suspension period for all purposes' dated 13.05.2015 as well as order of Appellate Authority imposing punishment of withhold next one increment with cumulative effect by order dated 9th September, 2016 contending that there is total non-application of mind on the part of authority concerned and the written statement filed by the Applicant raising his defence is not at all considered either by Disciplinary Authority or by Appellate Authority. He, therefore, prayed that the impugned orders are not sustainable in law and liable to be quashed.

4. The learned P.O. fairly concedes that there is no compliance of provisions contained in Rule 72(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules of 1981' for brevity) while treating the period of suspension as 'suspension period for all purposes.

5. As regard order of punishment, she made feeble attempt contending that the evidence recorded by the Enquiry Officer justify the imposition of punishment, regardless of absence of any discussion on the evidence by Disciplinary Authority. In alternate submission, she pleads that the matter be remanded to Disciplinary Authority for decision afresh.

6. As stated above, in the present O.A, two orders are challenged. First relates to the order dated 13.05.2015 treating entire period of suspension as 'suspension period of all purposes' and second issue pertains to order passed by Appellate Authority dated 9th September,

2016 imposing punishment of withholding of next one increment with cumulative effect.

7. Firstly, let us see the legality of order dated 13.05.2015 whereby the period of suspension is treated as 'suspension period for all purposes'. As stated above, on 13.05.2015 itself, the Disciplinary Authority passed final order in D.E. holding the Applicant guilty and imposed the punishment of withholding of two increments with cumulative effect. Surprisingly, on the same day, immediately he passed another order dated 13.05.2015 (Page No.17 of P.B.) wherein all that, the Disciplinary Authority stated as under :-

“संदर्भ : १) या कार्यालयाचे निलंबन आदेश क्र. २४ दि.२१/०३/२०१४.
२) या कार्यालयाचे आदेश क्र.३८ दि.१३/०५/२०१५.

आदेश

श्री. दि. बा. देसाई, उच्चस्तर लिपिक यांना त्यांच्याविरुद्ध प्रस्तावित केलेल्या शिस्तभंगविषयक विभागीय चौकशी कार्यवाहीखाली संदर्भ क्र.१ च्या आदेशान्वये निलंबधिन ठेवण्यात आले आहे. संदर्भ क्र.२ च्या आदेशान्वये त्यांना महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ५ (१) मधील खंड (चार) अन्वये शिक्षा देण्यात आली असल्यामुळे श्री. दि.बा. देसाई, उच्चस्तर लिपिक (निलंबिन) संपुष्टात आणून त्यांना शासन सेवेत पुनः स्थापित करण्यात येत आहे.

त्यांचा निलंबन कालावधी हा सर्व प्रयोजनार्थ निलंबन कालावधी म्हणून ग्राह्य धरण्यात येईल.”

8. As such, there is absolutely no reasoning or discussion as to what prevail Disciplinary Authority to treat the suspension period as 'suspension period for all purposes' and order was passed mechanically.

9. At this juncture, it would be apposite to refer Rule 72 of 'Joining Time Rules of 1981' which *inter-alia* provides the procedure to be followed while reinstating the employee in service and steps required to be taken while passing order of treatment to suspension period. Here, Rule 72(3) and (5) are material, which are as follows :-

“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty.-

(1)

(2)

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4)

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.”

10. As such, as per Rule 72(3), at the time of reinstatement of the Government servant in service, the authority competent needs to form opinion as to whether the suspension was wholly unjustified. It is negative test. Suffice to say, the Competent Authority is required to see whether the suspension period is wholly unjustified or otherwise and after recording his specific opinion with reasons there for, he is required to pass appropriate order.

11. Regret to note that the Disciplinary Authority seems to be ignorant of the Rules and the procedure to be followed and passed one line order of treating the suspension period as ‘suspension period for

all purposes'. As such, there is total non-application of mind and non-adherence to the procedure as well as requirement of Rule 72(3). Indeed, the learned P.O. fairly concede that the Disciplinary Authority failed to abide the provisions of law, and therefore, prayed for liberty for passing an order afresh in consonance with Rules.

12. Shri A.V. Bandiwadekar, learned Advocate for the Applicant opposed the submission advanced by the learned P.O. for remitting the matter to the Disciplinary Authority on the ground that the Applicant is already retired and there is total ignorance of law on the point of Disciplinary Authority for which the Applicant should not be penalized.

13. Suffice to say, there is no escape from the conclusion that this is a case of total non-application of mind as well as ignorance of the provisions of 'Joining Time Rules of 1981' on the part of Disciplinary Authority while passing the impugned order dated 13.05.2015.

14. Furthermore, the Disciplinary Authority was required to issue notice to the Applicant before deciding the treatment to the suspension period, as contemplated under Rule 72(3) of 'Joining Time Rules of 1981'. In the present case, the Disciplinary Authority imposed order of punishment and on the same day passed another order of one line without giving an opportunity of hearing to the Applicant as mandated under Rule 72(5) of 'Joining Time Rules 1981'. In this behalf, the learned Advocate for the Applicant rightly referred to the Judgment of Hon'ble High Court in **Writ Petition No.12660/2017 (Shri Sujal Ali Inamdar Vs. Superintendent of Police)** wherein also, the issue of issuance of Show Cause Notice was before consideration. The Hon'ble High Court in Para Nos.2, 3 & 4 held as follows :-

"2. According to the learned Counsel in compliance of the Sub Rule 5 of Rule 72, no notice was given to the petitioner of the quantum proposed

and therefore he had no opportunity to make a representation. According to him, the order impugned before the Tribunal was passed in breach of SubRule5 of Rule 72. We find that before the Tribunal this ground is not raised in clear terms. The petitioner has only mentioned that no reasons have been given while passing the impugned order. Learned Counsel for the petitioner invited our attention to ground (b) raised in this Petition contending that principles of natural justice have not been followed by giving reasonable opportunity to file reply to show cause notice. In our opinion, in the interest of justice, the petitioner should be given one more opportunity to raise the plea of non-compliance of Sub Rule 5 of Rule 72 before the Tribunal.

3. *Learned AGP opposing the petition placed reliance on the decision of the Apex Court in the case of Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra reported in 1997(3) SCC 636. The Apex Court though has observed that rule gives discretion to the disciplinary authority to decide how the suspension period is to be treated has nonetheless observed that authority may on the reinstatement after following the principles of natural justice pass appropriate order including treating suspension period as period of not on duty.*

4. *It is in this light of the matter, we are inclined to remit the matter back to the Tribunal for deciding the OA afresh on its merits. Hence, following order.”*

15. This being the position, the matter needs to be remitted back to the Disciplinary Authority to pass appropriate order about treatment of suspension period afresh after giving notice to the Applicant, as contemplated under Rule 72(5) of ‘Joining Time Rules 1981’.

16. Now turning to the aspect of punishment also, it pains to note that the Disciplinary Authority has failed to observe Rules and procedures to be followed while passing order in D.E. The Tribunal is aware that the scope of judicial intervention in the matter of punishment imposed in D.E. is limited and the Tribunal cannot act as an Appellate Authority so as to re-assess the evidence. However, there has to be adherence to the principles of natural justice and whatever grounds are raised by the delinquent in his written statement, those are required to be dealt with in an appropriate manner, which is completely missing in the present case.

17. Here, material to note that, on receipt of report of Enquiry Officer, the Disciplinary Authority had issued Show Cause Notice to the Applicant and called upon his explanation / reply. The Applicant has submitted his detailed reply on 03.02.2015 running into 15 pages (Page Nos.63 to 79 of P.B.). He has commented upon the evidence of witnesses and tried to make out how he is innocent. Appalling to note that, this reply dated 03.02.2015 is not at all referred much less discussed in the order passed by the Disciplinary Authority on 13.05.2015. Significant to note that, in reference mentioned in order dated 13.05.2015 that though there is mention of Show Cause Notice dated 14.03.2014 issued to the Applicant, the mention of written explanation dated 03.02.2015 given by the Applicant is conspicuously absent. As such, it is crystal clear that the reply submitted by the Applicant was not at all looked into by Disciplinary Authority, as if no reply was filed. Furthermore, there is no discussion about the evidence recorded by the Enquiry Officer and the reasons for accepting the same. The Disciplinary Authority simply reproduced the charges in his two-page order and on *ipse-dixit* imposed the order of punishment. All that, in order dated 13.05.2015, there is only one Para to show that the Enquiry Officer has submitted the report, holding the Applicant guilty, and therefore, he has passed the order of punishment. True, the Disciplinary Authority is not required to elaborate the reasons or evidence in detail, but there has to be an application of mind to the evidence as well as defence raised by the delinquent, which is completely missing in the present matter. The basic rule of law and natural justice requires the recording of reasons in support of order passed by quasi-judicial authority. It must be self-explanatory showing application of mind. The impugned orders clearly exhibit non-application of mind, non-adherence of provisions of law and ignorance of basic tenets of law.

18. In view of above, indeed, the Appellate Authority itself ought to have remitted the matter back to Disciplinary Authority instead he

simply modified the punishment order, that too, without discussing the grounds raised by the Applicant in his defence. Therefore, the order of Appellate Authority is also not sustainable in law.

19. For the aforesaid reasons, the impugned order dated 13.05.2015 treating the period of suspension as 'suspension period for all purposes' as well as the order passed by the Disciplinary Authority dated 13.05.2015 imposing punishment of withholding next two increments with cumulative effect and order of Appellate Authority dated 09.09.2016 are required to be quashed and set aside and matter needs to be remitted back to Disciplinary Authority for decision afresh on both the count in view of observations made above. The O.A, therefore, deserves to be allowed partly. Hence, the following order.

O R D E R

- (A) The Original Application is allowed partly.
- (B) The impugned orders dated 13.05.2015 and 09.09.2016 are hereby quashed and set aside.
- (C) The matter is remitted back to Respondent No.1 Disciplinary Authority to pass order of treatment of suspension period as well as order of punishment afresh in accordance to Rules within two months from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 04.11.2019
Dictation taken by :
S.K. Wamanse.